

# GOVERNMENT OF THE DISTRICT OF COLUMBIA

## OFFICE OF THE ATTORNEY GENERAL

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**FOR IMMEDIATE RELEASE:** Thursday, February 26, 2015

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## Office of the Attorney General Releases Frequently Asked Questions Document on District's Marijuana Laws

*FAQ Clarifies Status of Relevant Laws Regarding Marijuana after Initiative 71 Takes Effect*

**WASHINGTON, D.C.** – Today, under the direction of Attorney General Karl A. Racine, the Office of the Attorney General (OAG) released a “Frequently Asked Questions” (FAQs) document regarding Initiative 71 and other District laws related to marijuana. The document aims to clarify the state of the law in the District after Initiative 71, which legalizes the possession and use of small amounts of marijuana in certain limited circumstances, became effective today.

**“In concert with our colleagues in the Mayor’s office and on the Council, we wanted to ensure that District residents, visitors and business proprietors had clarity on what is and is not permissible after Initiative 71 takes effect,”** Attorney General Racine said. **“While Congress has put us in a difficult situation by prohibiting the creation of a more complete regulatory regime for the rest of this fiscal year, our highest priority is to protect public health and safety as well as the clearly expressed will of the District’s voters.”**

The text of the FAQs document is below.

### **Frequently Asked Questions on Initiative 71 (Marijuana Legalization), the Marijuana Decriminalization Act, and Marijuana Possession in the District of Columbia**

*The following FAQs reflect the views of the District of Columbia Office of the Attorney General and reflect Attorney General Racine’s commitment to help educate the public, including residents and visitors to the District of Columbia and members of the media. The FAQs are not legal advice, and are not intended to be legal advice.*

#### **Q: What is Initiative 71?**

A: Initiative 71 is a voter initiative, passed by a majority of the District of Columbia voters in November 2014, which makes lawful certain activities involving marijuana. The full text of the initiative as transmitted to Congress can be found [here](#).

**Q: When does Initiative 71 take effect?**

A: The initiative took legal effect on Thursday, February 26, 2015, at 12:01 a.m., which is when the legally required period of passive congressional review ended.

**Q: Under Initiative 71 and other governing laws, what types of marijuana-related activities are permitted and which are prohibited?**

A: **Permitted:** Under D.C. law as amended by Initiative 71, effective February 26, 2015, there is no criminal penalty for a person in the District who is 21 years of age or older to:

- Possess or transport marijuana weighing less than two ounces;
- Transfer up to one ounce of marijuana to another person who is at least 21 years of age and without receiving payment of any sort;
- Use marijuana in one's principal residence or in a private residence (put another way, a person cannot "smoke a joint" on a street corner in the District, but a person 21 or older may do so in his or her principal residence); or
- Grow, harvest or process, inside a house, building or rental unit that is that person's principal residence, no more than six cannabis plants, with three or fewer being mature, flowering plants, and possess within that house, building or apartment the marijuana produced by such plants.

**Not permitted:** The below activities remain illegal after Initiative 71 takes effect:

- Possession, sale, transfer, or transport of more than two ounces of marijuana;
- Possession of *any* amount of marijuana by a person under 21 years of age;
- Selling *any* amount of marijuana or giving any amount of marijuana to a person in exchange for money, goods, or services;
- Smoking or otherwise consuming marijuana in a public space or any of the following places: A) A street, alley, park, sidewalk, or parking area; B) A vehicle in or upon any street, alley, park, or parking area; or C) Any place to which the public is invited; and
- Operating or being in physical control of a vehicle (e.g., a car, truck, motorcycle, or bicycle) or watercraft (e.g., a boat) while intoxicated, under the influence of, or impaired by, alcohol or marijuana or any other prohibited drugs.

**Q: Under Initiative 71, may people under the age of 21 in the District lawfully possess or use marijuana?**

A: No. However, the Metropolitan Police Department (MPD) has stated it will seize any marijuana from a person under the age of 21 and only arrest a person under 21 if the person is in possession of more than 2 ounces of marijuana.

**Q: Is public smoking of marijuana in the District legal once Initiative 71 takes effect?**

A: No.

**Q: Under Initiative 71, can a person smoke marijuana while driving his or her car?**

A: No. You cannot smoke in public in a car, even if the car is stopped. And, if you're operating a vehicle while under the influence of marijuana, you are subject to arrest based on the District's existing impaired-driving laws.

**Q: Under Initiative 71, can a person still obtain a medical marijuana prescription in the District?**

A: Yes, if the person is eligible under the medical marijuana-related rules. Initiative 71 does not change the pre-existing and governing laws regarding medical marijuana. Pursuant to law and regulations of the D.C.

Department of Health, medical marijuana remains available for individuals eligible under the DOH regulations. The medical-marijuana-related rules and regulations [are available on the DOH website](#).

**Q: Does Initiative 71 permit a person to give marijuana to another person?**

A: Initiative 71 allows a person who is at least 21 years of age to transfer up to one ounce of marijuana to another person who is at least 21 – so long as no payment of any kind is made. It is illegal to transfer more than one ounce of marijuana or to sell any amount of marijuana.

**Q: Can District residents still report suspicions of marijuana-related violations to the Metropolitan Police Department?**

A: Yes. That said, MPD will only make an arrest if there is illegal activity occurring, a judgment the MPD officer assigned can make after evaluating who is doing what and what amounts are involved.

**Q: Is possession or use of marijuana on property controlled by the federal government lawful?**

A: No. Federal law enforcement can arrest a person for the possession or use of any amount of marijuana on federal property.

**Q: If I live in public housing that is funded with federal dollars, can I smoke marijuana in my apartment?**

A: Use of marijuana in federally funded public housing remains illegal. You should check with the building rules as to whether you might jeopardize your housing by violating federal rules through the use of marijuana. The safer course is not to do so.

**Q: After Initiative 71 takes legal effect, can my employer subject me to drug tests or otherwise subject me to potential employment consequences for my use of marijuana?**

A: Yes. Just because possession by adults 21 years or older and use in certain circumstances has been legalized, that does not change the rights of employers in the District to drug-test employees and establish rules for employees regarding marijuana use.

**Q: How does Initiative 71 apply on college campuses?**

A: As with anywhere else in the District, the use of marijuana in public space or in any space to which the public is invited remains illegal under Initiative 71. In addition, each educational institution's own internal rules and policies about drug possession on campus or in school-owned housing would continue to apply.

**Q: Does the so-called "rider" enacted by Congress in their Fiscal Year 2015 Appropriations bill overrule Initiative 71?**

A: No. The rider did not overrule Initiative 71, because the initiative was enacted prior to the rider (even though Initiative 71's effective date is after the rider, as a result of the legally required passive congressional review period). And the rider is not retroactive. It is the District's view that Initiative 71 is legally effective as of February 26, 2015. Some in Congress have expressed a different view as to the legal effect of the rider.

**Q: What does the FY 2015 rider prevent the District from doing in terms of fully implementing Initiative 71?**

A: The rider prohibits the District from doing certain things while using any FY 15 appropriated District or federal funds. Specifically, the District cannot enact any law, rule, or regulation to legalize or otherwise reduce penalties associated with the possession, use, or distribution of marijuana. This means by law that, among other things, no regulatory or tax laws may be enacted with appropriated FY 15 funds that reduce penalties associated with the possession, use or distribution of marijuana. It also means that no formal Council hearings on any such bills may be conducted using FY 15 funds. That said, it is also the OAG's view that roundtables, press conferences, white papers and other public discussions of the legal and policy issues related to such

proposals are fully lawful under the rider and other applicable laws. The Council has already conducted one such roundtable.

**Q: Who prosecutes marijuana-related law violations in the District of Columbia?**

The Metropolitan Police Department will enforce District of Columbia law, such as selling any amount of marijuana, impaired driving, and consuming any amount of marijuana in public. However, federal law enforcement agencies can arrest any person for the possession or use of any amount of marijuana on any federal property located in the District. Generally, the Office of the U.S. Attorney for the District of Columbia prosecutes criminal drug offenses by adults, and the D.C. Office of the Attorney General prosecutes delinquent offenses by juveniles. The consumption of marijuana in public, however, is prosecuted by the D.C. Office of the Attorney General for adults well as juveniles. In addition, the D.C. Department of Consumer and Regulatory Affairs can revoke business licenses in certain circumstances. The Department of Health has some civil-enforcement responsibilities as it relates to food products.

**Q: Does Initiative 71 mean that federal law allows possession of marijuana for people 21 years of age or older for amounts less than two ounces in weight?**

No. Under federal law, federal law enforcement officers have the authority to arrest anyone in the District for possession of any amount of marijuana. Certain U.S. Department of Justice guidance suggests that the federal government may deprioritize enforcement in jurisdictions where possession of small amounts of marijuana has been made lawful under state or local law. Attorney General Racine is actively engaged with the U.S. Department of Justice on this issue. But the District cannot guarantee any residents or visitors that they are free from federal law enforcement for possession or use of any amount of marijuana in the District.

**Q: If Initiative 71 is challenged in court, will the OAG defend it?**

Yes. This law was validly enacted by the voters and legislators of the District of Columbia within their Home Rule Act authority, and the Attorney General is fully committed to defending it if necessary.

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